(1) 83-1846

Office - Supreme Court, U.S
FILED
MAY 11 1984
ALEXANDER L. STEVAS
CLERK

No. ___

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LIFE SCIENCE CHURCH, et al.,

Petitioners,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MARTIN GARBUS

Frankfurt, Garbus, Klein
& Selz, P.C.
485 Madison Avenue
New York, New York 10022
(212) 980-0120

99pp

QUESTIONS PRESENTED

1. Does the injunction of the missionary and proselytizing activities of the Life Science Church and its ministers violate the free exercise clause of the First Amendment?

2. In determining and holding that the Life Science Church and its ministers violated various state business fraud statutes and that the Life Science Church and its ministers engaged in the unauthorized practice of law, did the New York courts improperly inquire into the validity of the religious beliefs of petitioners?

3. Does the appointment of a receiver with power to attach and seize the assets of petitioners violate

their right against self-incrimination pursuant to the Fifth Amendment as applied to the states by the Fourteenth Amendment?

PARTIES BELOW

The state court litigation resulting in the judgment and order sought to be reviewed was brought by the People of the State of New York against the Life Science Church, Life Science College, Larry Ranucci, Frank Petrozza, Donna Petrozza, Frank Ebner, Howard Tapen, Rick Ross, Lorraine Jania, Bernice Gross, Annette Schack, Lee Hirsch and Joseph Dalconzo. All of the above-named parties remain parties to this petition except for Donna Petrozza, Howard Tapen, Rick Ross, Lorraine Jania, James Rotollo, Lee Hirsch and Joseph Dalconzo.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES BELOW	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	3
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	4
STATEMENT OF THE CASE	5
The Tenets Of The Life Science Church	6
The State Court Proceedings ..	10
REASONS FOR GRANTING THE WRIT OF CERTIORARI	15
I THE INJUNCTION OF THE PETITIONERS' MISSIONARY AND PROSELYTIZING ACTIVITIES VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT	15

TABLE OF CONTENTS (cont'd)

		Page
A	The Law Is Clear That When The Particular Purposes And The Activities Of A Religious Organization Are Challenged As Being Something Other Than Religious, Courts May Not Look Beyond The Declared Content Of The Religious Beliefs Or Examine Their Validity	16
B	The State Did Not Meet The Burden Of Proof Necessary To Overcome Petitioners' Fundamental First Amendment Rights	24
C	The State Failed To Use The Least Restrictive Alternative In Its Interference With Petitioners' Fundamental First Amendment Rights	31
II	THE APPOINTMENT OF A RECEIVER TO SEIZE AND SELL THE ASSETS OF PETITIONERS VIOLATES THEIR RIGHT AGAINST SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT	34

TABLE OF CONTENTS (cont'd)

	Page
CONCLUSION	37
APPENDIX	A
Judgment Of New York Supreme Court Dated July 9, 1982	A1
Decision Of New York Supreme Court Dated April 27, 1982	A16
Order Of Appellate Division Dated April 26, 1983	A36
Decision Of Appellate Division Dated April 26, 1983	A39
Order Of Court Of Appeals Dated September 1, 1983	A40
Order Of Appellate Division Dated November 22, 1983	A42
Order Of Court Of Appeals Dated February 16, 1984	A44
Statutory Provisions	A46

TABLE OF AUTHORITIES

CASES:

	Page
Board of Education v. Barnette, 319 U.S. 624 (1943)	23
Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981)	21
Fowler v. Rhode Island, 345 U.S. 69 (1953)	18
Garrity v. New Jersey, 385 U.S. 493 (1967)	36
Grosso v. United States, 390 U.S. 62 (1968)	36
Haynes v. United States, 390 U.S. 85 (1968)	36
Leary v. United States, 395 U.S. 6 (1969)	36
Lefkowitz v. Cunningnam, 431 U.S. 801 (1977)	36
Lefkowitz v. Turley, 414 U.S. 70 (1973)	36
Marchetti v. United States, 390 U.S. 39 (1968)	34-35
Murdock v. Pennsylvania, 319 U.S. 105 (1943)	19-20
People v. Woody, 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 (1964).....	21

TABLE OF AUTHORITIES (cont'd)

CASES:

	Page
Schneider v. New Jersey, 308 U.S. 147 (1939)	32
Sherbert v. Verner, 374 U.S. 398 (1963)	26, 31-32
Spevack v. Klein, 385 U.S. 511 (1967)	35
United States v. Ballard, 322 U.S. 78 (1944)	17-18, 22-24, 25
United States v. Seeger, 380 U.S. 163 (1965)	21-22
Welsh v. United States, 398 U.S. 333 (1970)	20-22
Wisconsin v. Yoder, 406 U.S. 205 (1972)	25-30

STATUTES:

New York Executive Law § 63(12)	5, 10-11
New York General Business Law § 359-fff	5, 10-11
New York Judiciary Law § 478 & 495	5, 10-11
U.S. Const. Amend I	passim
U.S. Const. Amend V	34-37

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LIFE SCIENCE CHURCH, et al.,

Petitioners,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioners Life Science Church, Life Science College, and individual petitioners, Larry Ranucci, Frank Petrozza, Frank Ebner, Bernice Gross and Annette Schack hereby petition for a writ of certiorari to review the order of the Court of Appeals of the

State of New York denying leave to appeal to that court from the judgment of the Appellate Division of the Supreme Court of the State of New York, First Department, affirming the trial court's order halting the missionary and proselytizing activities of the petitioners and providing for the seizure of petitioners' property.

OPINIONS BELOW

The decision of the Honorable Seymour Schwartz, Justice of the Supreme Court, New York County, is reported at 113 Misc. 2d 952, 450 N.Y.S.2d 664 (Sup. Ct. New York Co. 1983) and is reprinted in the Appendix to this petition at pages A16-A35. The memorandum decision of the Appellate Division, First Department, is reported at 93 A.D.2d 774, 461 N.Y.S.2d 803 (1st Dep't 1983)

and is reprinted at A39. The judgment of the Supreme Court, New York County, is reprinted at A1-A15.

JURISDICTION

This Court has jurisdiction to issue a writ of certiorari pursuant to 28 U.S.C. §1257(3). The final order of the New York Court of Appeals, the highest court in New York, denying petitioners leave to appeal to that court, was issued February 16, 1984. (A44)

Previously, petitioners' appeal to the New York Court of Appeals as of right from the order of the Appellate Division, First Department, was dismissed by order dated September 1, 1983. (A40) Petitioners' motion to the Appellate Division, First Department, for permission to appeal to the New York

Court of Appeals was denied by order of the Appellate Division dated November 22, 1983. (A42) Accordingly, the order of the Court of Appeals denying petitioners' permission to appeal to that court constitutes a final judgment or decree by the highest court of New York in which a decision could be had.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

The Fifth Amendment provides, in pertinent part, that "[n]o person

shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

Section 63(12) of New York's Executive Law, section 359-fff of New York's General Business Law, and sections 478 and 495 of New York's Judiciary Law are reprinted in the Appendix at pages A46-A52.

STATEMENT OF THE CASE

Petitioners seek a writ of certiorari to review the final judgment of the courts of New York enjoining them from engaging in bona fide religious activities, including missionary and proselytizing activities. The New York courts have impermissibly engaged in an inquiry as to the validity of petitioners' beliefs and determined that

some of these beliefs are non-religious, and are therefore subject to injunction.

The Tenets Of The Life Science Church

The cornerstone of the Life Science Church is its emphasis on individualism, patriotism and a pure form of democratic values. The Church preaches self-awareness and good works. As part of its religious expression, the Church preaches that, through a renewal of the spirit of individualism, it can lead the fight for a return to a society based on the ideals it holds sacred.

The sacred purpose of the Church is its desire to teach all adherents that they are in control of their own lives, and should not surrender that control to other individuals or organizations. This

principle of individualism is so significant to Church ideology that reference is made to it repeatedly in Church literature. For example, all auxiliary churches are granted charters on the condition that its members:

> are bound by oath or affirmation that they support the principle of the Life Science Church including the principle and sacred belief that each individual owns the right over his own life, that he owns no right over the life of anyone else and that no one owns any right over his life. (App. 1491)

The Life Science Church members are deeply patriotic. The most important Church documents are the Declaration of Independence and the United States Constitution. Copies of the Bill of Rights are given to all prospective ministers. Fittingly, the Life Science Church is attractive

especially to patriotic and loyal Americans, such as policemen, firemen, civil servants and ex-servicemen.

The Life Science Church Prayer is a poignant expression of the philosophy of positive mental attitudes. It is given to every minister of the Church. Like every religious prayer, it calls upon the reader to focus on an idea which finds its expression in a way of life:

> I will use this day to live a simple, sincere and serene life, repelling promptly every thought of discontent, anxiety, discouragement, impurity, and self-seeking; cultivating cheerfulness, charity, love for my fellow man, and the habit of restraint; exercising carefulness in expenditure, generosity in giving, thoughtfulness in conversation, diligence in appointed service, fidelity in every trust, and a childlike faith in humanity. (App. 1487)

Church ministers perform a wide variety of sacerdotal functions, typical of those performed by more "established" religions. They officiate at funerals, weddings, baptisms and christenings. They are also involved with numerous charitable functions and endeavors.

The religious nature of the beliefs of the Life Science Church has never been an issue in this case. Nonetheless, the State of New York has attempted to characterize certain of its activities as non-religious and to apply various business statutes to halt them. The State of New York has convinced the New York courts that the missionary and proselytizing activities of the Church and its ministers are secular and has succeeded in effectively shutting down the Church.

The State Court Proceedings

The State of New York commenced this action in 1980, seeking an injunction against the Church and its ministers from violating certain state statutes designed to prevent business frauds. After a trial, the court found that the tax benefits claimed by the Church were fraudulent and misleading in violation of section 63(12) of New York's Executive Law (A25) and that petitioners' activities constituted a "chain distribution scheme" within the meaning of section 359-fff of New York's General Business Law. (A27) Moreover, the Court ruled that assurances given by the Church to ministers constituted the unauthorized practice of law pursuant to sections 478 and 495 of New York's Judiciary Law. (A29) The trial court so ruled despite the objection raised by

the Church and individuals that an injunction against these activities would violate the free exercise clause of the First Amendment. (A30)

The trial court permanently enjoined the Church and the individual respondents from "directly or indirectly soliciting the sale of . . . ministers credentials" (A3), thus making the collection of donations by new members illegal and depriving the Church of a vital source of funds. Moreover, the trial court enjoined the Church and its ministers from "engaging in the unauthorized practice of law" (A4), and with its broad definition of "unauthorized practice," effectively barred the Church and its ministers from conducting any sermon under pain of contempt. Simply put, the court forced the Church and its ministers to cease

all missionary and proselytizing activities.

The trial court also ordered restitution to ministers it considers to have been "defrauded." It ordered the appointment of a receiver to take charge of all the property of the Church and the individual ministers and ordered that the Church turn over a membership list to the receiver. (A6) The congregation hall has been seized, telephone services have been cut off, newsletters have been stopped.

In its appeal from the trial court's decision and judgment, the Church and its ministers argued, among other things, that the injunction against their activities violated their rights under the First Amendment and that the appointment of a receiver with broad powers to attach and seize assets

was constitutionally improper. Nonetheless, the decision of the trial court, with one exception, was affirmed by the Appellate Division, First Department, the intermediate appellate court in New York, in a memorandum decision (A39) accompanying a brief order (A36). The only portion of the trial court judgment reversed was that contained in the sixth decretal paragraph, in which fines for civil contempt had been ordered against individuals in spite of the lack of any evidence as to which, if any, of the individuals were present when the allegedly contemptuous activity took place. (Id.)

Petitioners' appeal to the New York Court of Appeals as of right, their motion to the Appellate Division, First Department, for leave to appeal to the

Court of Appeals, and their motion to the Court of Appeals for leave to appeal to that Court, all of which included the assertion that their constitutional rights had been violated, were denied.

Accordingly, the present posture of the case is as follows: The trial court has taken actions against the Church and its ministers fundamentally inconsistent with the freedoms and protections of the United States Constitution. Yet none of New York's appellate courts have been willing to undertake a serious review of the constitutional implications of these infringements. The Supreme Court represents the last hope of the Church and its ministers for protection of these vital constitutional rights.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE INJUNCTION OF THE PETITIONERS' MISSIONARY AND PROSELYTIZING ACTIVITIES VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

This case presents the extremely important question as to the extent to which state statutes designed to prevent business fraud and the unauthorized practice of law may be used as a basis for enjoining the activities of an undisputed bona fide religion.

The courts of New York found that the missionary and proselytizing activities of the Life Science Church and the individual petitioners were beyond the protection of the free exercise clause of the First Amendment. They made this finding despite the fact that the religious nature of the Church was never questioned by New York's

Attorney General, who conceded the right of the Church to maintain its theology and teachings (A17).

In enjoining the activities of the Church and its ministers, the trial courts separated what it believed to be religious activity from that which it, based on its own "objective" analysis of the evidence, believed to be secular. Such an approach is inconsistent with a long line of cases in which this Court has held that the trier of fact may not engage into an inquiry as to whether an asserted particular religious belief is or is not valid.

A. The Law Is Clear That When The Particular Purposes And The Activities Of A Religious Organization Are Challenged As Being Something Other Than Religious, Courts May Not Look Beyond The Declared Content Of The Religious Beliefs Or Examine Their Validity

It is a fundamental principle

of Constitutional law that courts cannot, without violating the protections of the First Amendment, delve into a religion and determine which portions thereof are and are not religious.

This principle was explicitly stated in United States v. Ballard, 322 U.S. 78 (1944), where defendant had been indicted for mail fraud for soliciting funds and memberships in a religious movement where ministers claimed, among other things, to possess "supernatural" healing powers. This Court held that the trier of fact could not be charged with determining whether or not the representations made by defendants were true:

> The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if these doctrines are subject to

> trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. Id. at 87 (emphasis added).

Ballard stands for the fundamental proposition that "it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment." Fowler v. Rhode Island, 345 U.S. 67, 70 (1953).

The trial court in this action engaged in precisely the type of factual inquiry barred by Ballard and its progeny. The court held that certain of the Church's activities were secular, and thus subject to regulation just like any other business.

In Murdock v. Pennsylvania, 319 U.S. 105 (1943), this Court barred just such an approach, holding that the State could not prohibit the sale of religious literature through application of a licensing regulation. The Court held that the activities of a religious group could not be judged by the same standards governing commercial enterprises:

> [T]he mere fact that religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through spoken and printed works are not to be gauged by standards governing retailers or wholesalers of books. . . . It is plain that a religious

> organization needs funds to remain a going concern . . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.

The intensely individual and democratic beliefs of the Church, which may appear as political and economic to some, are unquestionably within the standard of "religions" as articulated by this Court. Recent case law contains many similar examples. In considering religions exemptions to participating in the Vietnam War, an activity which many courts could define as "political" rather than "religious" if allowed to analyze the belief, this Court held that religious exemptions could not be withheld from "those who hold strong beliefs about our domestic and foreign affairs" so long as their "beliefs are .

. . deeply held and . . . rest . . . upon moral, ethical or religious principle [rather than] solely upon considerations of policy, pragmatism or expediency." Welsh v. United States, 398 U.S. 333, 342-343 (1970).

Similarly, in United States v. Seeger, 380 U.S. 163, 166 (1965), the Court held that the test for whether a belief is religious is whether that belief occupies a meaningful place in the life of the possessor of the belief. See also Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981), holding that a belief that personal identification numbers, such as social security numbers, are "the mark of the Beast" and tools of the Antichrist is entitled to First Amendment protection; People v. Woody, 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 (1964) (a ban on the use of

the drug peyote was held to be unconstitutional as applied to a bona fide religion that used the drug as part of its religious practices).

The tenets of the Life Science Church are as deeply held as were the anti-war sentiments in the Welsh case, the religious beliefs in the Seeger case, the opposition to identification numbers in Callahan or the belief in the use of peyote in Woody. The belief that taxation has destroyed the democratic nature of this society and is a diabolical evil cannot be summarily dismissed by a court as being "purely secular." Nor can the fact that a secular experience stimulated a religious response extinguish the fact that the activity is religious.

In Ballard, this court held that religious truth is a personal

matter which need not conform to the government's or anyone else's notion of what constitutes legitimate religious beliefs and practices. 322 U.S. at 78. Ballard holds that the fundamental purpose of the First Amendment is to allow groups and individuals to practice and express their beliefs witnout interference from the government. Accord, Board of Education v. Barnette, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . . ")

Yet, in spite of this rule, the New York courts conducted a factual inquiry into the religious beliefs of the Church in a wholly impermissible manner. To interpret the activities of

the Church as being motivated by purely economic and secular interests and to use it as evidence of an intent to defraud prospective ministers plainly violates the rule of Ballard. There was no evidence in the record that any member of the church had the intent to create a false impression, or was not sincere in his beliefs. Yet the New York courts have enjoined the Church's missionary and proselytizing activities, effectively shutting it down.

B. The State Did Not Meet The Burden Of Proof Necessary To Overcome Petitioners' Fundamental First Amendment Rights

The beliefs of the Life Science Church, and the manner of expression of these beliefs, do not lose First Amendment protection simply because the State alleges -- or even produces

evidence of -- a misrepresentation by that group. Wisconsin v. Yoder, 406 U.S. 205 (1972); United States v. Ballard, 322 U.S. 78 (1944). In fact, the state faced a tremendous burden of proof to overcome the First Amendment protection afforded the sincere religious activities of a group, and failed to meet that burden.

Wisconsin v. Yoder, 406 U.S. 205, 215 (1972), holds that conduct which is an inseparable part of an individual's sincerely held religious beliefs can be forbidden by the state only if it shows an interest "of the highest order." The Court stated that "there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability",

Id. at 220. If the religious conduct does not pose "some substantial threat to "public safety, peace or order," Id. at 230, it cannot be pronibited or penalized.

The nature of the state's burden in such a case was defined in Sherbert v. Verner, 374 U.S. 398 (1963). In holding that a Seventh-Day Adventist could not be denied unemployment compensation because of her refusal to work on Saturday, the Court declared that a religious practice could be penalized only if the State could show "the gravest abuses, endangering paramount interests. . . ." Id. at 406 It was insufficient, the Court held, to show "merely . . . a rational relationship to some colorable state interest. . . ." Ibid.

The question in Yoder was whether the state of Wisconsin could enforce its mandatory education laws, requiring attendance of all children until the age of 16, against members of the Amish religion who refused on religious grounds to send their children to school beyond the eighth grade.

On the basis of the evidence presented, the Court described the Amish view of education as "not merely a matter of personal preference, but one of a deep religious conviction, shared by an organized group, and intimately related to daily living. . . . [T]he Old Order Amish religion pervades and determines virtually their entire way of life, regulating it with the detail of the Talmudic diet through the strictly enforced rules of the church community." 406 U.S. at 216. The Court

concluded that to require Amish children to attend school beyond the eighth grade would contravene "the basic religious tenets and practice of the Amish faith . . .", id. at 218, and "gravely endanger if not destroy the free exercise of respondents' religious beliefs." Id. at 219.

In dealing with the conflict between the free exercise clause and the state's asserted compelling interest, the Court refused to accept the State's "sweeping claim" that its interest in compulsory education was paramount to the religious claims of the Amish. It held that it "must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education at age 16, and the impediment to those objectives that would flow from recognizing the claimed

Amish exemption." Id. at 221. The Court then did just that. It carefully examined the reasons put forward by the State to justify its compulsory education policy and concluded that, important as that policy is, "it would require a more particularized showing from the State . . . to justify the severe interference with religious freedom. . . ." Id. at 227.

Applying the analysis required by Yoder to the instant case it is apparent that the State has not met its burden to justify its severe interference with the Life Science Church. The missionary and proselytizing work of the members of the Church is central to the dogma of the Church. The necessity of becoming a minister as a way to express a religious sentiment of democracy and individualism

plays a critical role in the life of Church members. The rituals of the Church, which include discussions of the present system, its forms and its rules, are an integral part of the Church's function. In fact, each minister must attend these services to become an active member of the group.

If church members are prohibited from meeting and discussing their beliefs and recruiting new ministers it would not just "gravely endanger .. [but would] destroy the free exercise of ... [their] religious beliefs." Wisconsin v. Yoder, supra, 406 U.S. at 219. Put simply, without being able to preach their theology, the members of the Life Science Church cannot practice their religion.

It is enough, to compel an analysis under the free exercise clause

of the First Amendment that the burden on religion be indirect. Therefore, the fact that the lower court decision does not compel the members of the Life Science Church to give up their theology does not lessen the Attorney General's burden to prove that there are paramount interests at stake. Sherbert v. Verner, 374 U.S. 398, 403 (1963).

C. The State Failed To Use The Least Restrictive Alternative In Its Interference With Petitioners' Fundamental First Amendment Rights

Sherbert v. Verner, 374 U.S. 398 (1963) makes clear that even if a state has a compelling reason for interfering with some religious activity, it must use the least restrictive alternative in regulating that activity. Thus in Sherbert the Court struck down South Carolina's

attempt to deny unemployment benefits to an applicant who refused to work on Saturday, the Sabbath of her Seventh-Day Adventist Church. It held that the State had not met its burden of showing that there was no alternative form of regulation that would meet the State's asserted goal of preventing malingering or deceit. Id. at 407.

Similarly, in Schneider v. New Jersey, 308 U.S. 147 (1939), the Court reversed the conviction of a Jehovah's Witness for soliciting door-to-door contributions without a required state permit, holding that less restrictive means -- such as individual prosecutors for fraud or trespass -- were available to meet the State's asserted goal of preventing "fraudulent appeals . . . in the name of charity and religion." Id. at 164.

The State has a clear remedy in this case -- to bring tax liability proceedings against any citizen who it believes has wrongfully withheld the payment of taxes. Yet in the instant case the State, in attempting to simplify its job at the expense of the First Amendment, has taken on both the impermissible interpretation of whether an activity is religious and the substantial infringement of the free exercise of religion.

Statements by Church members are protected speech. If they prove to be false or fraudulent, the State may look to remedies under the penal law, but the State cannot simply halt such speech through the application of state statutes designed to regulate business conduct.

II. THE APPOINTMENT OF A RECEIVER TO SEIZE AND SELL THE ASSETS OF PETITIONERS VIOLATES THEIR RIGHT AGAINST SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT

The judgment against individual petitioners demands that they "transfer to the receiver all property" (A8) and otherwise comply with enforcement proceedings. Petitioners' compelled compliance with that judgment is violative of the Fifth Amendment because it will result in statements or actions by individual petitioners which may be incriminatory.

Petitioners can reasonably expect that the turnover of assets purportedly derived by the fraudulent sale of ministeries, pursuant to the judgment, "will significantly enhance the likelihood of their prosecution [for such fraud] and that it will readily

provide evidence which will facilitate their convictions." Marchetti v. United States, 390 U.S. 39, 48 (1968). Enforcement of the judgment against petitioners and the compelled turnover of assets would require petitioners to acknowledge the existence of assets and to implicitly authenticate such assets as having been improperly obtained.

Statutory and court imposed obligations which would force an individual to incriminate himself cannot be enforced. It is well established that a proper claim of the privilege against self-incrimination provides a full defense to prosecution for failure to pay a tax, if payment of the tax creates a "real and appreciable," and not merely an "imaginary and unsubstantial" hazard of self-incrimination. Marchetti v. United

States, 390 U.S. 39, 54 (1968) (prosecution for failure to pay federal occupational tax on wagering); Leary v. United States, 395 U.S. 6 (1969) (prosecution for failure to pay federal marihuana excise tax). See also Grosso v. United States, 390 U.S. 62 (1968); Haynes v. United States, 390 U.S. 85 (1968).

In cases similar to this case, the Court has ruled that an individual cannot be forced to choose between the exercise of the privilege on the one hand and any kind of penalty on the other. Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385, U.S. 511, 515 (1969); Lefkowitz v. Turley, 414 U.S. 70 (1973); Lefkowitz v. Cunningham, 431 U.S. 801 (1977).

The only permissible penalty that may be visited upon one who claims

the Fifth Amendment is that a jury in a civil case may be instructed that it may draw an adverse inference from a party's invocation of the privilege of self-incrimination. This the trial court has already done.

CONCLUSION

The courts of New York have effectively shut down a religion. They have done so by improperly inquiring into the validity of petitioners' religious beliefs and by applying state statutes designed to regulate business conduct. For all of the reasons urged herein, petitioners urge that this Court

grant a writ of certiorari to the Court of Appeals of the State of New York.

Respectfully submitted,

MARTIN GARBUS
Frankfurt, Garbus, Klein & Selz, P.C.
485 Madison Avenue
New York, New York 10022
(212) 980-0120

APPENDIX

JUDGMENT OF NEW YORK SUPREME COURT
DATED JULY 9, 1982

At a Special Term, Part 63 of the Supreme Court of the State of New York, at the County Courthouse, 60 Centre Street, New York, New York on the 9th day of July, 1982.

P R E S E N T :

HON. SEYMOUR J. SCHWARTZ,

Justice

JUDGMENT -- INDEX NO. 41101/80

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

-against-

LIFE SCIENCE CHURCH a/k/a FREEDOM FOUNDATION, FREEDOM FOUNDATION a/k/a LIFE SCIENCE CHURCH, LIFE SCIENCE COLLEGE, LARRY RANUCCI, FRANK PETROZZA, DONNA PETROZZA, FRANK EBNER, HOWARD TAPEN, RICK ROSS, LORRAINE JANIA, JAMES ROTOLLO, BERNICE CLOES, ANNETTE SCHACK, LEE HIRSCH AND JOSEPH G. DALCONZO,

Respondents

PRESENT: HON. SEYMOUR SCHWARTZ

The issues in the above entitled action having been heard before the Honorable Seymour Schwartz, a Justice of this Court, without a jury, at trial term, Part 63 of this Court, 60 Centre Street, New York from June 1, 1981 to July 2, 1981 and Robert Abrams, the Attorney General of the State of New York, Carol H. Arbeb, Carole Weidman and Judith Siegel-Baum, Assistant Attorneys General, having appeared on behalf of the petitioner and Frankfurt, Garbus, Klein and Selz, Jay Dennis Cohen and George Delmarmo having appeared for the respondents and petitioner having moved by order to show cause dated October 17, 1980 for an order holding respondents in contempt of court for their violation of this Court's order entered August 12, 1980; and all matters having been duly tried and the court having after due

deliberation duly made and filed a decision on April 27, 1982,

NOW, on motion of Robert Abrams, Attorney General of the State of New York, it is hereby

(1) ORDERED, ADJUDGED AND DECREED, that the respondents, their agents and representatives, successors, assigns, employees and all persons acting in concert with them are permanently enjoined from directly or indirectly soliciting the sale of, offering to sell, or selling or, requiring a donation to obtain minister's credentials. The term "ministers' credentials," when used in this order and judgment shall include any document or other matters purporting to be (i) a certificate of ordination, (ii) a diploma allegedly granting a Doctor of Divinity degree or similar status and (iii) other evidence of the

authority of the bearer or holder to be or to exercise the rights and privileges of a minister; and it is further

(2) ORDERED, ADJUDGED and DECREED that the respondents, their agents and representatives, successors, assigns, employees and all other persons acting in concert with them are permanently enjoined from directly or indirectly engaging in, or authorizing, or aiding anyone in engaging in the unauthorized practice of law as defined in Section 478 and 495 of the Judiciary Law; and it is further

(3) ORDERED AND ADJUDGED that respondents' wilful violation of this Court's order entered August 12, 1980 constitutes criminal and civil contempt of court; and that such contempt was calculated to and in fact did impede, defeat, impair and prejudice the right of the petitioner;

(4) ORDERED AND ADJUDGED that respondents, as punishment for criminal contempt of court, are fined $10,000.00; and it is further

(5) ORDERED that upon the failure of respondents to purge themselves of their contempt of court by payment of the above-stated fine to the receiver within ten days after service upon respondents' attorneys of a copy of this order with notice of entry, a warrant of arrest may issue EX PARTE and without further notice to respondents; and it is further

(6) ORDERED that respondents are fined for civil contempt an amount equal to the sum of all payments made to them by defrauded consumers for the purchase of ministeries or ministers' credentials during the period of August 12, 1980 to April 27, 1982, as shall be determined by the receiver appointed

pursuant to this order and judgment and it is further

(7) ORDERED that upon the designation of Hon. David H. Edwards, Jr., dated July 19, 1982 Maxwell T. Cohen, Esq., One Penn Plaza, New York, N.Y. be and is hereby appointed receiver, and with all the powers provided therein, pursuant to the General Business Law §353-a for the purposes of taking charge of the property of the respondents and to effectuate restitution to defrauded consumers pursuant to this judgment and the decision dated April 27, 1982; and it is further

(8) ORDERED that the receiver, before commencing his duties, and in order to qualify therefor, shall execute and file with this Court an oath that he will faithfully and fairly discharge the trust committed to him and shall cause

an undertaking to be executed and filed herein in the sum of $350,000; with leave to apply for an additional undertaking if greater sums may have been received by him by virtue of his functioning as a receiver in this proceeding.

(9) ORDERED that the receiver is authorized to employ counsel to institute and carry on any and all legal proceedings necessary to effectuate the mandates of this court's order and his duties thereunder; and it is further

(10) ORDERED that, for the purpose of providing restitution to those individuals who have been defrauded by the respondents, their agents and representatives, the receiver shall create a Fund consisting of all property of the respondents their agents, representatives, successors, assigns, employees and all other persons

acting in concert with them, any other person or persons holding real or personal property of the respondents individually, jointly severally or in trust for the respondents, and any and all monies paid to them for the purchase of ministers' credentials and any gains realized from said funds; and it is further

(11) ORDERED that the respondents, their agents, and representatives, successors, assigns, employees and all other persons acting in concert with them and all persons claiming through them shall transfer to the receiver all property of the respondents, or the proceeds thereof, or the monies derived from any sales of said property; and it is further

(12) ORDERED that the receiver is authorized forthwith to take charge and posssession of the bank accounts and

all other real and personal property of the respondents, their agents and representatives, successors, assigns, employees and all other persons acting in concert with them and to sell or otherwise dispose of said property in order to constitute the cash assets of the Fund; and it is further

(13) ORDERED that the Fund shall be maintained in Manufacturers Hanover Trust Company for a period of no less than two years from the date of the Fund's establishment, the period to be extended as circumstances warrants and upon application to this Court by the receiver or the Attorney General; and it is further

(14) ORDERED that to effectuate this order and judgment the respondents' attorneys shall, within ten days of the receiver's demand, provide to the receiver a list of the names and

addresses of all person who purchased minister's credentials in the Life Science Church; and it is further

(15) ORDERED that the receiver shall give notice of this order to defrauded consumers in the manner described below:

(a) Publication on or before August 16, 1982 for no fewer than three consecutive weeks in a newspaper of general circulation in each borough of the City of New York and in Nassau and Suffolk Counties;

(b) Individual notice, by mail, on or before September 15, 1982 to each defrauded consumer who purchased minister's credentials or ministries directly or indirectly from respondents,

their agents, or representatives; and it is further

(16) ORDERED that the content of the notices, both by newspaper and letters, shall be approved by the Attorney General as to form and substance prior to publication or mailing; and it is further

(17) ORDERED that the receiver in ordering restitution shall give first priority to those purchasers of minister's credential who received no payments for persons they in turn recruited into the Life Science Church; second priority to those purchasers of Minister's Credentials who received no more than two payments for persons they in turn recruited into the Life Science Church; third priority to all remaining purchasers of minister's credentials and

it is further

(18) ORDERED that the receiver shall determine

a) the number of defrauded consumers and the amount paid by each for his/her minister's credentials since respondents began soliciting the purchase of minister's credential in New York State, and

b) the actual monetary loss suffered by each defrauded consumer as the result of the purchase of minister's credential including, but not limited to, fees paid for the purchase of minister's credentials, and interest from the date of purchase thereon, and it is further

(19) ORDERED that the receiver shall distribute, to the extent of available funds, to each eligible consumer an amount equal to the loss sustained, as determined by the receiver

and, if sufficient funds are not available to do so, such distribution shall be on a pro-rated basis; and its further

(20) ORDERED that prior to distribution of any funds, the receiver shall present any plan of distribution to the Court and to the Attorney General's office for approval; and it is further

(21) ORDERED that pursuant to CPLR 8303(a), (6), Executive Law 63(12) and the General Business Law 353(1), petitioner is awarded costs directly attributable to the prosecution of this action, the amount to be set forth in an affidavit submitted to this court by the attorneys for the petitioner to be paid by respondents to petitioner's attorney and that the amount of costs is severed and is to be allowable upon settlement of a supplemental judgment;

(22) ADJUDGED that the petition is dismissed against respondents Donna Petrozza and Lorraine Jania for petitioner's failure to make out a prima facie case against them;

(23) ORDERED that Lee Hirsch and Joseph G. Dalconzo are removed as respondents upon consent of the Petitioner;

(24) ORDERED AND ADJUDGED that the respondents, their agents and representatives, successors, assigns, employees and all persons acting in concert with them are permanently enjoined from continuing to use the name "College" unless and until such authorization is obtained from the appropriate state agency; and it is further

(25) ORDERED AND ADJUDGED that the respondents, their agents and representatives, successors, assigns,

employees and all persons acting in concert with them are permanently enjoined from engaging or attempting to engage in a chain distribution scheme as defined in section 359fff of the General Business Law.

Filed July 16, 1982
County Clerk's Office
New York

E N T E R

J.S.

Norman Goodman
Clerk

DECISION OF NEW YORK SUPREME COURT DATED APRIL 27, 1982

THE PEOPLE OF THE STATE OF NEW YORK, Petitioner, v LIFE SCIENCE CHURCH, Also Known as FREEDOM FOUNDATION, et al., Respondents.

Supreme Court, Trial Term, New York County, April 27, 1982

HEADNOTE

Religious Corporations and Associations — Unlawful Sale of Ministers' Credentials for Tax Avoidance — Unlawful Pyramid Scheme

Respondent Life Science Church and certain named church officials, in addition to being guilty of criminal contempt for willful disobedience of a prior court order, are permanently enjoined (1) from engaging in fraudulent and deceptive practices (Executive Law, § 63, subd 12) based upon representations to the public claiming that a complete legal tax exemption could be obtained after paying $3,500 for minister's credentials and attending three training sessions at the church's "college" since neither the church nor any of its ministers is entitled to a tax exemption in view of the fact that the church operates in whole or in part for the private purposes of the respective ministers and their families (US Code, tit 26, § 501, subd [c], par [3]; § 170, subd [c], par [2], cl [C]; 26 CFR 1.501 [c] [3]-1 [c] [2]); (2) from engaging in an unlawful pyramid scheme (General Business Law, § 359-fff) based upon the payment of commissions to member ministers for the recruitment of new ministers; (3) from engaging in the unauthorized practice of law (Judiciary Law, § 478) based upon representations that the church would provide legal advice to its ministers on tax and other matters; and (4) from continuing to use the name "college" without proper authorization (Education Law, § 224); the constitutional protection of the free exercise of religion is not a license for unrestricted conduct and cannot be used as a shield to an unlawful claim of tax exemption, an illegal pyramid scheme, the improper practice of law and misuse of the term "college".

APPEARANCES OF COUNSEL

Robert Abrams, Attorney-General (*Carole L. Weidman, Judith E. Siegel-Baum* and *Carol H. Arber* of counsel), for petitioner. *Martin Garbus, Seth Siegel* and *Jay Dennis Cohen* for Life Science Church and others, respondents. *George Delmarmo* for Howard Tapen and another, respondents.

OPINION OF THE COURT

SEYMOUR SCHWARTZ, J.

Petitioner, the Attorney-General of the State of New York, seeks a permanent injunction enjoining respondents from violating subdivision 12 of section 63 of the Executive Law, claiming fraud in seeking church-related charitable exemptions, article 23-A of the General Business Law, claiming an unlawful pyramid scheme and article 15 of the Judiciary Law, claiming the unlawful practice of law. Petitioner also seeks restitution of the sums paid to respondents.

A preliminary injunction was issued by the Honorable HERMAN CAHN on August 6, 1980 and an order entered thereon on August 12, 1980. That order enjoined respondents from (1) accepting payment as compensation for selling ministers' credentials; (2) compensating affiliated or nonaffiliated institutions for the recruitment of ministers if such compensation were based on the number of ministers ordained; and (3) stating the tax consequences of becoming a minister or starting a church unless such tax consequences were in the form of a written opinion furnished by an attorney or certified public accountant.

On October 6, 1980, petitioner received a complaint that respondent Life Science Church was continuing to sell ministers' credentials and was still disseminating tax advice in violation of the August 12 injunction. Petitioner instituted an investigation and on October 17, 1980 filed a motion to punish respondents for civil and criminal contempt. The proceedings were referred to this court for trial.

Petitioner does not seek to enjoin the right of the Life Science Church to practice its religion. At trial petitioner conceded the right of the Life Science Church to maintain its theology and teachings. "The basic doctrines, principles and beliefs held as 'TRUTH' of the Life Science Church are The Declaration of Independence and The Constitution of the United States. (The 16th and 25th Amendments are not included in the Doctrines of the Life Science Church.)" The Attorney-General seeks to enjoin only those practices not protected by the Constitution and statutes and which are violative of laws applicable to all individuals, groups, organizations and institutions in our society.

At trial the Attorney-General presented the testimony of its Investigator Edward Martinez who attended a Freedom Foundation tax seminar on January 31, 1980 and subsequently became an ordained minister in the Life Science Church. Mr. Martinez testified that at the introductory seminar he was given instruction by respondents Frank Petrozza, Rick Ross, and James Rotollo. He also viewed a film on tax strategies featuring William Drexler, archbishop of the Life Science Church and a disbarred attorney who was recently convicted of tax violations in connection with misrepresentation of the tax laws as a sales pitch in

the sale of ministries in the Life Science Church. Martinez' instructors explained how by joining the church he could become completely and legally tax free while at the same time maintaining his secular employment. The church guaranteed to back its members legally and financially if challenged by any government authorities. Tax exemption was to be obtained after paying $3,500 for minister's credentials and attendance at three training sessions of the Life Science College. Once full payment was made the minister would name and establish his own church chartered by the Life Science Church. He then could either make donations to his church or take a vow of poverty placing all his property in the name of his particular church and then pay for all personal and family expenses through the church account, thereby avoiding all taxes. To encourage prospects to join quickly they were informed that the $3,500 payment would rise $100 in each succeeding month. They were urged to be wise and affiliate immediately before having to make higher payments.

Respondents Petrozza and Rotollo informed Investigator Martinez that he would receive a 10% commission on payments made by any new minister he recruited into the church.

The first session attended by Investigator Martinez was a class in preparing Federal and State income tax returns taught by respondent Bernice Gross with the assistance of respondents Howard Tapen, Frank Petrozza, and Larry Ranucci. At this session he learned that respondent Howard Tapen was the New York area director of the Life Science Church and that Tapen was to be contacted for legal advice and consultation but by appointment only.

The second training session attended by Investigator Martinez was devoted to drafting church by-laws, a constitution, and trust agreements. Joseph Dalconzo taught the class aided by Carmine D'Onofrio and respondent Annette Schack.

On February 23, 1980, Investigator Martinez completed his payment to Howard Tapen for his minister's credentials. Being paid up and now a minister, he was instructed to attend a meeting of supervisors for his third college

training session. That meeting was conducted by Messrs. Tapen, Dalconzo and Ranucci. Mr. Dalconzo and Mr. Tapen described the new chain of command in the church and the necessity of using church terms, not business terms. The ministers were informed that Frank Ebner as legal counsel would deal with ministers' problems with banks and real property tax. Mr. Ranucci then described how a Life Science Church minister could become a millionaire in one year by recruiting new ministers, who in turn would recruit new ministers thereby receiving commissions on all recruitments at an ever increasing level which would make him a millionaire.

On March 27, 1980 Investigator Martinez received his formal minister's credentials and on March 31, 1980 a Doctor of Divinity degree from the Life Science Church.

Joseph Dalconzo testified that he was introduced to the Life Science Church by Larry Ranucci. It was agreed that Dalconzo would become a director of the Life Science Church upon payment of $10,000 and would have his own organization. An agreement was drafted and executed by Dalconzo and Ranucci incorporating those terms. Dalconzo then proceeded to attend meetings and recruit ministers. During his involvement with the church, Dalconzo was made aware that Ranucci was bishop of the New York area, William Drexler, archbishop, and Ebner and Tapen, acting bishops. Petrozza and Dalconzo were directors with each responsible for his own organization.

Through Ranucci, Dalconzo learned the details of the church's marketing program. A minister who recruited another was a "missionary representative" and received a 10% commission on each recruit's payment. After recruiting two ministers in one month he became a "missionary supervisor". After the first two recruits the commission rose to $500 for each recruit. As a director, Dalconzo received 40% of the money paid by those he recruited. Dalconzo testified that during his six months in the Life Science Church he recruited 20 people and received approximately $95,000. To avoid disputes a grievance committee was set up to deal with problems concerning the division of commissions.

Other testimony and evidence confirmed the testimony of Investigator Martinez and Joseph G. Dalconzo as to the operations of the Life Science Church, the recruitment of ministers, the theme on how to become a millionaire, promises of tax exemption and the legal backing the church would provide for its ministers.

Respondents rested without producing any witnesses. They also failed to produce certain subpoenaed documents and from this failure the court has drawn inferences further supporting petitioner's version of the operations of the church.

The Attorney-General challenges the Life Science Church's claim of complete legal tax exemption through the purchase of minister's credentials, that churches cannot be audited or questioned by the Internal Revenue Service, that churches are automatically exempt from taxation, that the burden is on the Internal Revenue Service to establish that a church is not entitled to exempt status, that ministers under a vow of poverty pay no taxes and that money given to any church is tax deductible. It denies that a minister may keep his job and donate up to 50% of his income to his own named church made up of himself, his spouse and children and be entitled to a charitable contribution deduction and thereby substantially reduce his tax obligations. It challenges the alternative procedure offered that a minister taking a vow of poverty to his church will eliminate his tax liability entirely. Under the vow of poverty procedure a minister would claim authority to expend church funds for his family's food, clothing, shelter, personal expenses and even for spiritual retreats to Las Vegas. The record is abundantly clear that all of these assertions were made by responsible representatives of the Life Science Church in their efforts to recruit new ministers.

The Attorney-General contends that the tax benefits claimed by the Life Science Church in setting up separate subsidiary churches are fraudulent and misleading and are in violation of subdivision 12 of section 63 of the Executive Law.

The income tax system of the United States — the envy of almost every government in the world — depends on

voluntary compliance by taxpayers who are called upon to compute and fix their own tax. Fewer than 2% of Federal income tax returns are audited. For such a voluntary system to be successful, taxpayers must believe that it is essentially fair in operation and that the burden of taxation is equitably spread. If this self-discipline is to be maintained improper exemptions must be ferreted out and denied because it is impossible for the government to collect income taxes through audit alone and the very structure of organized government may be undermined.

Witnesses presented by the Attorney-General included some of the Nation's leading tax experts: Jerome Kurtz, former Commissioner of the Internal Revenue Service; Father Charles Whelan, professor of law, Fordham University Law School, an expert on church tax exemptions; Stanley Weithorn, author of a definitive treatise on tax exempt organizations and Howard Schoenfeld, special assistant to the assistant commissioner for exempt organizations of the Internal Revenue Service. Their testimony aided the court in focusing on the tax exemption issues presented.

Taxation of religious organizations is constitutionally permissible under the free exercise of religion clause of the First Amendment to the Constitution. (*Watchtower Bible & Tract Soc. v County of Los Angeles*, 30 Cal 2d 426, cert den 332 US 811; *Ham Evangelistic Assn. v Matthews*, 300 Ky 402.) It follows that church property is taxable except as it may be specifically exempted by statutory enactment. The issue then is not one of constitutional dimension but whether an individual or organization claiming religious exemption qualifies under applicable statutes.

For a church to receive the benefit of tax exemption, it must satisfy the requirements of section 501 (subd [c], par [3]) of the Internal Revenue Code. This section requires that:

(1) It is organized and operated exclusively for charitable purposes;

(2) No part of its earnings inure to the benefit of a private individual or shareholder;

(3) The organization does not substantially engage in attempts to influence legislation and does not intervene in political campaigns.

Failure to satisfy any one of the requirements set forth in section 501 (subd [c], par [3]) is fatal and will destroy tax exempt status. (*Stevens Bros. Foundation v Commissioner of Internal Revenue*, 324 F2d 633, cert den 376 US 969.)

In addition, to receive the benefit of tax exempt status two further requirements have been read into section 501 (subd [c], par [3]). The organization must be formed for a public as opposed to a private purpose, and the activities of the organization must be in conformity with well-defined public policy.

The subsidiary churches sanctioned by Life Science Church operate in whole or in part for the private purposes of the respective ministers and their families and thereby violate both the inurement and operational requirements of section 501 (subd [c], par [3]). The courts have held that a single substantial nonreligious purpose precludes exempt status. (*Parker v Commissioner of Internal Revenue*, 365 F2d 792; *American Inst. for Economic Research v United States*, 302 F2d 934.)

An organization is not operated exclusively for one or more exempt purposes if its earnings inure in whole or in part to the benefit of private shareholders or individuals. (Treasury Reg, § 1.501 [c] [3]-1 [c] [2]; 26 CFR 1.501 [c] [3]-1 [c] [2].)

In *Calvin K. of Oakknoll v Commissioner* (69 TC 770, 37 TCM 1380, affd 79-1 USTC, par 9328), the United States Court of Appeals for the Second Circuit, affirmed on the opinion below of the Tax Court which held that the "Religious Society of Families" was not operated exclusively for religious purposes and consequently contributions to the organization were not deductible for tax purposes. The Tax Court stated (37 TCM, at pp 1381-1382): "[N]o one besides petitioners benefited from the use of Society property. Petitioners alone had signature authority over the Society's checking account * * * By providing for petitioner's personal needs, the Society had a 'non-charitable purpose substantial in nature.' * * * We conclude, therefore, that

the Society was not operated exclusively for the specified purposes."

Private inurement is also proscribed by section 170 (subd [c], par [2], cl [C]) of the Internal Revenue Code and thereby disqualifies a minister's gift to his church from being considered a charitable contribution. While the evidence is sparse, the best that can be said is that less than 5% of Life Science Church funds go to charity and unless a minister can establish that there has been no private benefit or inurement to him, the church does not qualify as tax exempt and contributions are not deductible.

The United States Tax Court has consistently upheld the Internal Revenue Service's position of disallowing charitable deductions for donations taxpayers make to churches they establish which operate for the benefit of their founders. (*Basic Bible Church v Commissioner*, 74 TC 846 [1980]; *Lynch v Commissioner*, 41 TCM 204; *Abney v Commissioner*, 39 TCM 965; *Pusch v Commissioner*, 39 TCM 838, affd 628 F2d 1353; *Walker v Commissioner*, 37 TCM 1851-15; *Calvin K. of Oakknoll v Commissioner*, 37 TCM 1380, *supra; Heller v Commissioner*, 37 TCM 643; *Clippinger v Commissioner*, 37 TCM 484; Revenue Rule 78-232, 1978-1 CB 69.)

In addition to requiring that a church meet the requirement of section 501 (subd [c], par [3]), section 170 requires that a "donation" must qualify as a charitable contribution within the meaning of the code. Consequently, where the donor expects to obtain a commensurate benefit, deductions are disallowed. A charitable contribution is synonymous with a gift. (*DeJong v Commissioner of Internal Revenue*, 36 TC 896, 899, affd 309 F2d 373; *Channing v United States*, 4 F Supp 33, affd 67 F2d 986, cert den 291 US 686.) If the benefits that the transferor can reasonably expect to obtain by making the transfer are sufficiently substantial to provide a *quid pro quo*, no deduction under section 170 is allowed. (Revenue Rule 78-232, 72-506.) Here, Life Science ministers anticipated and received direct economic benefits from their payments to their church. Accordingly, their payments were not "gifts" within the meaning of section 170 and were not deductible contributions.

Religious officials are required to pay income tax on earnings. An individual is not relieved of Federal income tax liability on income earned by merely assigning his income to a church. Nor does a vow of proverty grant automatic immunity from Federal income tax. For a vow of poverty to be effective, and an exemption to accrue, the member of the religious order must receive the income as an agent of the order and remit the income to the order where the funds will be treated as the income of the order and not the member. (Revenue Rule 77-290, 76-323; *Francis E. Kelly,* 62 TC 131.)

Where there is a vow of poverty, an agency relationship must be established in which the employer looks directly to the order, not the individual member, for performance of services. Therefore, for a vow of poverty to have exemptive tax consequences, the church must be exempt under section 501 (subd [c], par [3]), the minister must be an agent. not a principal of the church, and the activities performed by the minister agent must be in furtherance of the exempt purposes of the church. Judged by this standard, a minister of the Life Science Church who maintains his regular secular employment and takes a vow of poverty does not secure an income tax exemption.

Life Science Church's contention that it cannot be audited by the Internal Revenue Service is wrong. The Internal Revenue Service is specifically authorized to audit churches in certain circumstances. (Internal Revenue Code [US Code, tit 26, § 7605, subd (c)].) In amplification, Treasury Regulation 1.6033-2 (a) (2) provides that every organization exempt from tax shall submit such additional information as may be required by the Internal Revenue Service to ascertain the basis of its exempt status and to administer the provisions of section 501 and the subsequent code sections.

The burden of proof is on the organization seeking to obtain tax exempt status. An exemption is an exception to the norm of taxation. An organization which seeks to obtain tax exempt status. therefore bears a heavy burden to prove that it satisfies all the requirements of the exemption statute. The Supreme Court repeatedly has said that exemptions from taxation are not granted by implication.

(See, e.g., *Mescalero Apache Tribe v Jones*, 411 US 145, 156, and authorities therein cited; *Harding Hosp. v United States*, 505 F2d 1068.)

In addition, respondents introduced into evidence a purported exemption letter from the Internal Revenue Service (respondents' "T" in evidence) which had the earmarks of forgery. It was disavowed by Commissioner Kurtz, Mr. Schoenfeld and Father Whelan and respondents were unable to offer any proof of its authenticity. The parties then stipulated that the Life Science Church never received an exemption from the Internal Revenue Service. There was also compelling testimony that the Internal Revenue Service would not grant an exemption to the Life Science Church.

The representations made by Life Science Church through its responsible agents and its publications claiming charitable exemptions were repeatedly stated and emphasized at meetings. They were in error and are fraudulent and deceptive practices in violation of subdivision 12 of section 63 of the Executive Law.

Section 359-fff of the General Business Law of the State of New York provides:

"Chain distributor schemes prohibited

"1. It shall be illegal and prohibited for any person, partnership, corporation, trust or association, or any agent of employee thereof, to promote, offer or grant participation in a chain distributor scheme.

"2. As used herein, a 'chain distributor scheme' is a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or solicit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme. As used herein, 'investment' means any acquisi-

tion, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

"3. A chain distributor scheme shall constitute a security within the meaning of this article and shall be subject to all of the provisions of this article."

The legislative history of section 359-fff states its goals (Memorandum of Attorney-General, NY Legis Ann, 1974, pp 78-79): "[T]he chain distributor scheme is an improvident promotion designed to lure persons in the lower income brackets, the young, the gullible, the unemployed or other persons in desperate need of a source of income into believing that through the magic of the chain distributor scheme, they can become one of the top two or three percent of the money earners in this country. Such representations usually result in a total financial loss to a person joining the chain distributor scheme. However, because the people to whom this approach is made often are easily led to believe that by such fanciful ventures they can escape from their current predicaments, it is imperative that legislation prohibiting such schemes be enacted as soon as possible to remove such schemes that prey on the unwary."

The Life Science Church promised return of the $3,500 or $3,600 payment to a prospective minister, and an even larger cash return if sufficient new ministers were received through him. A new member of the Life Science Church was given the right to act as "missionary representative" and was entitled to a 10% commission for each new member he recruited into the church. After recruiting two fully paid members in one month, the "missionary representative" was granted advancement to the "missionary supervision" level and thereby became eligible to receive a special bonus of $500 for each new fully paid minister recruited. After the "missionary supervision" level, one could become a director, and, like Director Dalconzo, receive 40% of all fees from the ministers brought in.

Ministers were enticed through a demonstration of number doubling. Two became 4, 8 became 16, 32 became 64, etc., and commissions mounted from $360 to a total of $1,023,500 when 2,047 new recruits were added. A chart was prepared to give dramatic visual impact on how to become a millionaire and member ministers were encouraged to join in a vocal "money humm" at meetings to raise morale and encourage a financial spirit. Computerized "family trees" were prepared to determine who was entitled to what proportion of a new minister's payment. A grievance committee was set up to resolve disputes.

Variations on the theme were possible. The contract executed by Dalconzo and Ranucci provided for a 40% commission to Dalconzo for bringing in new ministers. Under the contract, Dalconzo received $95,000 by bringing in 20 ministers.

Under subdivision 12 of section 63 of the Executive Law of the State of New York, the Attorney-General is authorized to seek and obtain restraining orders and restitution against corporations and individuals who have engaged in repeated or persistent fraudulent or illegal business practices. "Fraud" and "fraudulent" have been defined to include acts and practices having the capacity or tendency to deceive the public even where there is no actual intent to deceive. (*Matter of Lefkowitz v Bull Inv. Group*, 46 AD2d 25.)

The evidence conclusively demonstrates a pyramid scheme in violation of section 359-fff of the General Business Law for which the Attorney-General is entitled to a restraining order and restitution to those affected.

Section 478 of the Judiciary Law prohibits the unauthorized practice of law. The section provides: "It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state or in any court in the city of New York, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or

to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section."

Section 495 of the Judiciary Law prohibits corporations or voluntary associations from practicing law.

Ministers were informed at meetings that Dr. Howard Tapen would provide legal advice. Dr. Tapen was not a lawyer. Ministers were discouraged from going to an outside attorney for advice on church business. Jack Tizzio was informed that the payment he made to become a minister was in part to cover the costs of the legal and financial backing that the church offered.

A film shown to prospective ministers introduced William E. Drexler, "the greatest tax attorney in this country", who spoke on the Life Science Church and encouraged membership. Mr. Drexler was disbarred by the State of Minnesota from practicing law and was recently convicted in California for misrepresenting the tax laws in order to sell ministries in the Life Science Church.

The promise to provide legal advice in the future is the unauthorized practice of law. (*People v Alfani*, 227 NY 334.) Holding oneself out to the public as being capable of giving legal advice is improper. (*People v People's Trust Co.*, 180 App Div 494.) Mr. Ebner and Mr. Tapen were not attorneys, yet they were referred to as "legal advisors" of the Life Science Church to whom ministers were to go for advice.

Matter of New York County Lawyers' Assn. v Dacey (28 AD2d 161, revd 21 NY2d 694) which held that defendant's book, which included forms of wills, *inter vivos* trusts and other related documents, was not the practice of law, is distinguishable. There it was held (28 AD2d, at p 174 [dissenting opn]) that the book did not involve "the representation and the advising of a particular person in a particular situation". Here, however, personalized and particular tax and organization advice to individuals and groups and the offer of future legal advice bring church conduct out of the *Dacey* holding. Prospective ministers were assured that they would be backed legally and financially by the Life Science Church. Instructions were tailored to suit the needs of each minister to obtain income tax exemption.

In its totality, the conduct constitutes the unauthorized practice of law in violation of section 478 of the Judiciary Law and subdivision 12 of section 63 of the Executive Law. These representations not only had the capacity to deceive, but in fact did deceive. (*People v Federated Radio Corp.*, 244 NY 33; *Matter of State of New York v Colorado State Christian Coll. of Church of Inner Power*, 76 Misc 2d 50.)

Section 224 of the Education Law provides: "1. No individual, association, copartnership or corporation not holding university, college or other degree conferring powers by special charter from the legislature of this state or from the regents, shall confer any degree or use, advertise or transact business under the name university or college, or any name, title or descriptive material indicating or tending to imply that said individual, association, copartnership or corporation conducts, carries on, or is a school of law, medicine, dentistry, pharmacy, veterinary medicine, nursing, optometry, podiatry, architecture or engineering, unless the right to do so shall have been granted by the regents in writing under their seal."

The parties stipulated at trial that the Life Science Church never filed an application with the Department of Education. The Life Science Church, nevertheless, held itself out as the Life Science College. Prospective ministers were told to attend "college classes" of the church. Even if the Life Science College were authorized to exist in

another State, the Director of Program Review of the New York State Department of Education testified, it would be necessary to file with the State of New York to obtain authority. This was never done. By using the word "college" respondents violated section 224 of the Education Law.

Respondents raise the defense of First Amendment free exercise of religion to the charges brought against them. It bears repetition that petitioner does not seek to enjoin the religious beliefs of the church. Regardless of this litigation, it may continue to follow those religious beliefs and adhere to its theology.

In *United States v Lee* (__ US __, 50 USLW 4201) the Supreme Court of the United States reiterated that not all burdens on religion are unconstitutional and that the State may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.

Tension between these two great principles does not automatically mean violation of the free exercise of religion clause of the First Amendment to the Constitution of the United States. The problem is an ancient one and with near unanimity our civilization has sought its solution in "Render therefore unto Caesar the things that are Caesar's; and unto God the things that are God's." (St. Matthew, ch 22, verse 21.)

Respondent Petrozza informed prospective ministers that he would show them how to become tax exempt and that he was talking of a legal fiction as opposed to a religious church. He warned prospective ministers not to admit to anyone that they became ministers to achieve tax exemption. Mr. Dalconzo testified that members need not separate themselves from their original church to become members of the Life Science Church. From Life Science's perspective they could conscientiously belong to the two churches. Prospects were told that they would be taught how to become millionaires, that the word "selling" was simply another word for "fund raising" and that "missionary program" was a synonym for "marketing". Members were warned that the purpose of making money through

the church should be expressed within the confines of the church but not "out there". The produce was described as "money".

The First Amendment free exercise of religion clause of the Constitution is not a license for unrestricted conduct. Freedom to believe is absolute but courts may restrict acts and conduct if the intrusion is justified by a compelling State interest to protect society and maintain peace, order and morality. (*Reynolds v United States*, 98 US 145; *Davis v Beason*, 133 US 333; *Jacobson v Massachusetts*, 197 US 11.) The courts have established a balancing test between the free exercise of religion and the State's interest in protecting the public. In *Cantwell v Connecticut* (310 US 296, 303-304) the Supreme Court of the United States stated: "[T]he Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be exercised as not, in attaining a permissible end, unduly to infringe the protected freedom".

In *United States v Lee* (__ US __, __, 50 USLW 4201, 4202, *supra*), the Supreme Court reviewed the long established analysis: "[N]ot all burdens on religion are unconstitutional." (See, e.g., *Prince v Massachusetts*, 321 US 158; *Reynolds v United States*, 98 US 145.) "The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." (*Thomas v Collins*, 322 US 516; *Wisconsin v Yoder*, 406 US 205; *Gillette v United States*, 401 US 437; *Sherbert v Verner*, 374 US 398.)

In *Matter of Holy Spirit Assn. for Unification of World Christianity v Tax Comm. of City of N. Y.* (81 AD2d 64, 75, 79) the Appellate Division, First Department, demonstrated the detailed analysis that may be made into the conduct of a religious organization by the State as the protector of society and denied the Unification Church an exemption from the real property tax stating:

"Therefore, despite the religious content of the doctrine, and the leitmotif of religion with which the eclectic teachings are tinged, the doctrine, to the extent that it analyzes and instructs on politics and economics has substantial secular elements. The mere use of religious terminology in connection with politics and economics will not obscure the traditionally non-religious nature of these fields. Petitioner, by undertaking an adventure in semantics, is attempting to cloak politics and economics with the blanket of religious dogma * * *

"By denying petitioner tax exemption, this court is not limiting petitioner's freedom to practice its beliefs and disseminate its doctrines; rather, it is merely declaring that petitioner is not organized and conducted in the manner required by law to entitle it to a tax exemption."

Held to these standards the claim of free exercise of religion is not a shield to an unlawful claim of tax exemption, an illegal pyramid scheme, improper holding out as an attorney and misuse of the term "college".

Respondents contend that certain collaboration between petitioner's office and the District Attorney of Nassau County taint a portion of the evidence and for that reason the proceeding should be dismissed.

The record reveals that Investigator Martinez held three meetings with the Nassau County District Attorney's office and that Assistant Attorneys-General Siegel-Baum and Weidman were deputized by the District Attorney of Nassau County but did not actually act in that capacity. There was no evidence of a parallel or joint plan by the Attorney-General and District Attorney to investigate the Life Science Church and respondents. In any event joint investigations are not unknown. It is only when such an investigation is carried on by one arm of government entitled to do so on behalf of another arm of government not entitled to do so that such investigation is improper. The only claim of impropriety by respondents is to be found in petitioner's Exhibit No. 50, the contract entered into between Ranucci and Dalconzo. Respondents contend that this contract was illegally given to the Attorney-General's office by Dalconzo's attorney who had lawfully secured it from the District Attorney.

The testimony established that because of the inconvenience to many of the respondents in having their documents tied up by the District Attorney, some were returned to them, including the Ranucci-Dalconzo contract. Dalconzo's attorney was one of many attorneys given access to the documents subpoenaed by the District Attorney. Dalconzo was entitled to his contract. It had been executed by him and having properly obtained it through his attorney, as other respondents had obtained their documents, he was free to make it available to the Attorney-General. Further, the claim of taint, even if successful, would only eliminate petitioner's "50" in evidence, the written contract. The contents of the contract were testified to orally by Dalconzo at trial and this, together with the other evidence, was sufficient to demonstrate the pyramid scheme.

As previously stated Judge CAHN enjoined respondents from (1) accepting payment as compensation for selling ministers' credentials; (2) compensating affiliated or nonaffiliated institutions for the recruitment of ministers ordained; and (3) stating the tax consequences of becoming a minister or starting a church unless such tax consequences were in the form of a written opinion furnished by an attorney or certified public accountant. Respondent flagrantly disregarded this order.

On October 7, 1980 Investigator Michael A. Segarra attended a Freedom Foundation seminar at the Taft Hotel. The meeting was conducted by Anthony Rousseau, who discussed the tax consequences of becoming a minister and solicited sales of ministers' credentials. He made it clear that no credentials would be issued until the entire donation had been paid. He falsely advised the audience that the court's injunction had been lifted against the church and its leaders. The May edition of *Good News*, a church newspaper, was given to Investigator Segarra together with another document which furnished written advice on the tax consequences of becoming a minister.

These acts constituted criminal contempt pursuant to section 750 of the Judiciary Law in that they were in willful disobedience of the court's lawful mandate. While at least 24 seminars were conducted since Judge CAHN's order, evidence is only available for that single seminar.

The Life Science Church is fined the sum of $10,000 for criminal contempt for violating the restraining order.

Section 773 of the Judiciary Law provides for a fine for civil contempt. It states that if "actual loss or injury has been caused to a party * * * by reason of the misconduct proved against the offender * * * a fine, sufficient to indemnify the aggrieved party, must be imposed * * * and paid over to the aggrieved party". The aggrieved parties are those individuals who were purchasers of ministers' credentials whom Justice CAHN sought to protect in his order and the actual loss to each party is the payment made in exchange for those credentials. The payments made after August 12, 1980 should be returned to the purchasers as fines because they are defrauded consumers. (*State of New York v Unique Ideas*, 44 NY2d 345.)

The petition is dismissed against respondents Donna Petrozza, and Lorraine Jania for petitioner's failure to make out a prima facie case against them. Lee Hirsch and Joseph G. Dalconzo are removed as respondents upon consent of petitioner.

The remaining respondents are permanently enjoined from directly, or indirectly engaging in the following illegal, fraudulent and deceptive acts:

(1) Soliciting funds from the public for ministers' credentials.

(2) Selling or offering to sell ministers' credentials.

(3) Engaging or attempting to engage in a chain distribution scheme as defined in section 359-fff of the General Business Law.

(4) Engaging or aiding anyone in engaging in the unauthorized practice of law.

(5) Continuing to use the name "college" unless and until proper authorization is obtained from the appropriate State agency.

A permanent receiver shall be appointed pursuant to section 353-a of the General Business Law, who shall have all the authority provided by statute, including but not limited to:

(1) Establishment of a fund for restitution to be maintained for a period of no less than two years from the time established and which time may be extended if circumstances warrant.

(2) The receiver shall account to the court with notice to the Attorney-General every six months during the existence of the fund.

(3) Notice shall be given to victimized consumers in the following manner:

(a) Publication for no less than three consecutive weeks in a paper of general circulation in each county in New York and in Nassau and Suffolk counties;

(b) Individual notice shall be sent to each consumer who purchased credentials from Life Science Church. Respondents' attorney shall provide the petitioner with an affidavit stating the names of purchasers, contents of the notice and date of the mailing;

(c) The contents of said notices (newspaper and by letter) shall be submitted to the Attorney-General for approval as to form and substance prior to mailing.

Pursuant to CPLR 8303 (subd [a], par 6), subdivision 12 of section 63 of the Executive Law, and subdivision 1 of section 353 of the General Business Law, petitioner is awarded a sum for costs directly attributable to the prosecution of this action, which it may establish by affidavit upon the settlement of order.

ORDER OF APPELLATE DIVISION
DATED APRIL 26, 1983

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 26, 1983.

Present- Hon. Francis T. Murphy
Presiding Justice

Joseph P. Sullivan
Samuel J. Silverman
J. Robert Lynch
E. Leo Milonas
Justices

STATE OF NEW YORK
COUNTY OF NEW YORK

The People of the State of New York,

Petitioner-Respondent,

-against-

Life Science Church a/k/a Freedom Foundation, Freedom Foundation a/k/a Life Science Church, Life Science College, Larry Ranucci, Frank Petrozza, Donna Petrozza, Frank Ebner, Howard Tapen, Rick Ross, Lorraine Jania, James Rotollo, Bernice Cloes a/k/a Bernice Gross, Annette Schack, Lee Hirsch and Joseph Dalconzo,

Respondents-Appellants.

Appeals having been taken to this Court by the above-named respondents-appellants from: an order of the Supreme Court, New York County (S. Schwartz, J.), entered on or about April 27, 1982, inter alia, finding respondent-appellant Life Science Church in criminal contempt; an order of said court entered on or about April 22, 1982, inter alia, directing that respondents show cause why an order of attachment should not be issued pendente lite; a judgment of said court dated June 2, 1982, inter alia, denying a motion to intervene; and a judgment of said court entered on July 16, 1982, inter alia, enjoining respondents from soliciting the sale of minister's credentials,

And said appeals having been argued by Martin Garbus of counsel for appellants, and by Carol H. Arber of

counsel for petitioner-respondent; and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the appeals from the order entered on or about April 27, 1982, the order entered on or about April 22, 1982, and the judgment dated June 2, 1982, are dismissed as superseded by the appeal from the judgment entered on July 16, 1982, and the judgment entered on July 16, 1982 is modified, on the law, and the facts, to the extent of striking the sixth decretal paragraph as relating to the fines imposed for civil contempt against the individual respondents, and otherwise affirmed, without costs and without disbursements.

ENTER:

JOSEPH J. LUCCHI,
Clerk

DECISION OF APPELLATE
DIVISION DATED
APRIL 26, 1983

(April 26, 1983)

1 THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v LIFE SCIENCE CHURCH et al., Appellants. — Appeal from the order of the Supreme Court, New York County (S. Schwartz, J.), entered on or about April 27, 1982, is dismissed as superseded by the appeal from the judgment of July 16, 1982. Appeal from order of the Supreme Court, New York County (S. Schwartz, J.), entered on or about April 22, 1982, is dismissed as superseded by the appeal from the judgment of July 16, 1982. Appeal from the judgment of the Supreme Court, New York County (S. Schwartz, J.), dated June 2, 1982, is dismissed as superseded by the appeal from the judgment of July 16, 1982. Judgment of the Supreme Court, New York County (S. Schwartz, J.), entered on July 16, 1982, is modified, on the law and the facts, to the extent of striking the sixth decretal paragraph as relating to the fines imposed for civil contempt against the individual respondents, and otherwise affirmed, without costs or disbursements. An examination of the record fails to reveal any evidence demonstrating that the individual respondents disobeyed the order of the Supreme Court, New York County (Cohn, J.), entered on August 12, 1980, in which respondents were enjoined from engaging in certain specified acts. Investigator Segarra, who testified regarding the violation of the order in question, stated that while he attended a seminar conducted by respondent Life Science Church after the preliminary injunction had been issued, he did not know any of the individual respondents and could not recognize any of them as having been present. Thus, the trial court should have limited the finding of civil contempt to the Life Science Church. Concur — Murphy, P.J., Sullivan, Silverman, Lynch and Milonas, JJ.

ORDER OF COURT OF APPEALS DATED SEPT. 1, 1983

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the first day of September A.D. 1983.

PRESENT, HONORABLE LAWRENCE H. COOKE, Chief Judge, presiding.

The People &c.,

Respondent,

-vs-

Life Science Church, et al.,

Appellants.

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial

constitutional question is directly involved.

Joseph W. Bellacosa
Clerk of the Court

ORDER OF APPELLATE DIVISION
DATED NOVEMBER 22, 1983

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 22, 1983.

Present- Hon. Francis T. Murphy
Presiding Justice

Joseph P. Sullivan
Samuel J. Silverman
J. Robert Lynch
E. Leo Milonas
Justices

The People of The State of New York,

Petitioner-Respondent,

-against-

Life Science Church a/k/a Freedom Foundation, Freedom Foundation a/k/a Life Science Church, Life Science College, Larry Ranucci, Frank Petrozza, Donna Petrozza, Frank Ebner, Howard Tapen, Rick Ross, Lorraine Jania, James Rotollo, Bernice Cloes a/k/a Bernice Gross, Annette Schack, Lee Hirsch and Joseph Dalconzo,

Respondents-Appellants.

The above-named respondents-appellants Life Science

Church, Life Science College, Larry Ranucci, Frank Petrozza, Frank Ebner, James Rotollo, Bernice Gross, and Annette Schack having moved for leave to appeal to the Court of Appeals from the order of this Court entered on April 26, 1983,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion, and the papers filed in opposition or in relation thereto; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied with $20 cost.

E N T E R

JOSEPH J. LUCCHI
Clerk of the Court

ORDER OF NEW YORK COURT OF APPEALS
DATED FEBRUARY 16, 1984

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixteenth day of February A.D. 1984.

PRESENT, HONORABLE LAWRENCE H. COOKE, Chief Judge, presiding.

The People of The State of New York,	
	Respondent,
-vs-	
Life Science Church, a/k/a, Freedom Foundation, Freedom Foundation, a/k/a Life Science Church, Life Science College, Larry Ranucci, et al.,	
	Appellants.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due

deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

Donald M. Sheraw
Clerk of the Court

12. Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

§ 359-fff. Chain distributor schemes prohibited

1. It shall be illegal and prohibited for any person, partnership, corporation, trust or association, or any agent or employee thereof, to promote, offer or grant participation in a chain distributor scheme.

2. As used herein a "chain distributor scheme" is a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or solicit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme. As used herein, "investment" means any acquisition, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services, and any other means, medium, form or channel for the transferring of funds, whether or not related to the production or distribution of goods or services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

3. A chain distributor scheme shall constitute a security within the meaning of this article and shall be subject to all of the provisions of this article.

§ 478. Practicing or appearing as attorney-at-law without being admitted and registered

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state or in any court in the city of New York, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Provided, however, that nothing in this section shall be held to apply (1) to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under section fourteen hundred three of the not-for-profit corporation law; or (2) to law students in their senior or final year of law school or persons who have graduated from a law school, who have taken the examination for admittance to practice law in the courts of record in the state immediately available after graduation from law school, or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, acting under

the supervision of a legal aid organization when such students and persons are acting under a program approved by the appellate division of the supreme court of the department in which the principal office of such organization is located and specifying the extent to which such students and persons may engage in activities otherwise prohibited by this statute; or (3) to law students in their senior or final year of law school serving without compensation, or to persons who have graduated from a law school approved pursuant to the rules of the court of appeals for the admission of attorneys and counselors-at-law and who have taken the examination for admission to practice as an attorney and counselor-at-law immediately available after graduation from law school or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, when such students or persons are acting under the supervision of the state or a subdivision thereof or of any officer or agency of the state or a subdivision thereof, pursuant to a program approved by the appellate division of the supreme court of the department within which such activities are taking place and specifying the extent to which they may engage in activities otherwise prohibited by this statute and those powers of the supervising governmental entity or officer in connection with which they may engage in such activities.

§ 495. Corporations and voluntary associations not to practice law

1. No corporation or voluntary association shall (a) practice or appear as an attorney-at-law for any person in any court in this state or before any judicial body, nor

(b) make it a business to practice as an attorney-at-law, for any person, in any of said courts, nor

(c) hold itself out to the public as being entitled to practice law, or to render legal services or advice, nor

(d) furnish attorneys or counsel, nor

(e) render legal services of any kind in actions or proceedings of any nature or in any other way or manner, nor

(f) assume in any other manner to be entitled to practice law, nor

(g) assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law or to furnish legal advice, services or counsel, nor

(h) advertise that either alone or together with or by or through any person whether or not a duly and regularly admitted attorney-at-law, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel.

2. No corporation or voluntary association shall itself or by or through its officers, agents or employees, solicit any claim or demand, or taken [1] an assignment thereof, for the purpose of representing any person in the pursuit of any civil remedy, nor solicit any claim or demand for the purpose of representing as attorney-at-law, or of furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body.

Nothing herein contained shall affect any assignment heretofore or hereafter taken by any moneyed corporation authorized to do business in the state of New York or its nominee pursuant to a subrogation agreement or a salvage operation. Any corporation or voluntary association violating the provisions of this subdivision or of subdivision one of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts prohibited in this subdivision or in subdivision one of this section or assists such corporation or voluntary association to do such prohibited acts is guilty of a misdemeanor. The fact that such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law, shall not be held to permit or allow any such corporation or voluntary association to do the acts so prohibited nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this subdivision or subdivision one of this section.

3. No voluntary association or corporation shall ask or receive directly or indirectly, compensation for preparing deeds, mortgages, assignments, discharges, leases, or any other instruments affecting real estate, wills, codicils, or any other instruments affecting disposition of property after death or decedents' estates, or pleadings of any kind in actions or proceedings of any nature. Any association or corporation violating the provisions of this subdivision is guilty of a misdemeanor.

4. Subdivisions one and two of this section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute.

5. This section shall not apply to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, in the preparation of any deeds, mortgages, assignments, discharges, leases or any other instruments affecting real property insofar as such instruments are necessary to the examination and insuring of titles, and necessary or incidental to loans made by any such corporation or association; nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party. Nothing herein contained shall be construed to prevent a corporation or association from furnishing to any person, lawfully engaged in the practice of law, such information or such clerical services in and about his professional work as, except for the provisions of this section, may be lawful, provided that at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his clients for the information and services so received. But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

6. This section shall not apply to a corporation organized under article fifteen of the business corporation law.

7. This section does not apply to organizations which offer prepaid legal services; to non-profit organizations whether incorporated or unincorporated, organized and operating primarily for a purpose other than the provision of legal services and which furnish legal services as an incidental activity in furtherance of their primary purpose; or to organizations which have as their primary purpose the furnishing of legal services to indigent persons.

No. 83-1846 (2)

Office - Supreme Court, U.S
FILED
JUN 15 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1983

LIFE SCIENCE CHURCH, *et al.*,
Petitioners,

v.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Respondent
Two World Trade Center
New York, New York 10047
(212) 488-7671

PETER H. SCHIFF
Acting Attorney-in-Chief
Appeals and Opinions

DANIEL L. KURTZ
PAMELA A. MANN
VALERIE A. VOORHEES
KARIN GOLDMAN
Assistant Attorneys General
Of Counsel

BEST AVAILABLE COPY

21pp

Questions Presented

Whether this Court should review decisions of the state court which made no inquiry into petitioners' religious beliefs but only found that they had violated statutes applicable to all individuals.

Whether the Fifth Amendment shields petitioners who were found to have violated state anti-fraud statutes from turning over the proceeds of such fraud to a court-appointed receiver.

TABLE OF CONTENTS

	PAGE
Questions Presented	1
Preliminary Statement	1
Statement of the Case	2
Argument	
I. The Trial Court's Injunction Did Not Violate Petitioners' First Amendment Rights But Merely Restrained Petitioners from Conduct Violative of New York State Law	7
II. The Provisions of the State Court Judgment Which Ordered Petitioners to Turn Over Assets Do Not Threaten Fifth Amendment Rights and Should Not Be Reviewed by This Court	11
Conclusion	12
Appendix	RA1

TABLE OF AUTHORITIES

PAGE

Cases:

Cantwell v. Connecticut, 310 U.S. 296 (1940) 7

Fisher v. United States, 425 U.S. 391 (1976) 11
Friedman v. HiLi Manor Home for Adults, 42 N.Y.2d 408, 397 N.Y.S. 2d 967, 366 N.E. 2d 1322 (1977) 11

Gillette v. United States, 401 U.S. 437 (1971) 9

Murdock v. Pennsylvania, 319 U.S. 105 (1943) 9

Reynolds v. United States, 98 U.S. 145 (1878) 7, 8, 9

SEC v. World Radio Mission, Inc., 544 F.2d 535 (1st Cir. 1976) 8
Sherbert v. Verner, 374 U.S. 398 (1963) 9

United States v. Ballard, 322 U.S. 78 (1944) 9
United States v. Lee, 455 U.S. 252 (1982) 9
United States v. Sun Myung Moon, 718 F.2d 1210 (2d Cir. 1983), *cert. denied*, 104 S.Ct. 2344 (1984) 8

Wisconsin v. Yoder, 406 U.S. 205 (1972) 9, 10

Constitution:

United States Constitution, Fifth Amendment ..... *passim*

United States Constitution, First Amendment ..... *passim*

Statutes:

New York Education Law § 224 ..... 5, 6

New York Executive Law § 63(12) 4, 5

New York General Business Law § 359 4

New York Judiciary Law § 478 5

No. 83-1846

IN THE

Supreme Court of the United States

October Term, 1983

LIFE SCIENCE CHURCH, *et al.*,
Petitioners,

v.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Preliminary Statement

This brief is submitted by Robert Abrams, Attorney General of the State of New York, on behalf of the People of the State of New York in opposition to the petition by Life Science Church, Life Science College, Larry Ranucci, Frank Petrozza, Frank Ebner, Bernice Gross, and Annette

Schack ("Petitioners") for a writ of certiorari to the Court of Appeals of the State of New York. The petition should be denied because the decisions of the state courts enforce compliance with state laws which protect members of the public from fraud without in any way violating petitioners' constitutional rights. Petitioners' claims that the state court orders violate rights secured under the First and Fifth Amendments of the U.S. Constitution are not supported by law or fact.

Statement of the Case

Contrary to petitioners' assertions, this case does not involve any inquiry into or regulation of the religious beliefs of the Life Science Church or its members. Rather, it addresses conduct engaged in by petitioners and injurious to the people of the State of New York.

This proceeding was commenced by the Attorney General of the State of New York when, after a lengthy investigation, he learned that petitioners had violated numerous New York statutes which prohibit fraud, deceptive and misleading practices, unlicensed practice of law, and the unauthorized use of the term "college." The investigation revealed that petitioners' conduct had defrauded New York State residents of millions of dollars.

The trial court's decision, based on six weeks of unrefuted testimonial and documentary evidence presented by the New York State Attorney General, held that petitioners had violated numerous state statutes designed to prohibit fraudulent conduct. As the trial court noted, petitioners

rested "without producing any witnesses [and] . . . also failed to produce certain subpoenaed documents" (A 20).*

By fraudulently claiming that contributions to the Life Science Church were tax exempt and that a minister in the Life Science Church would pay no taxes, petitioners defrauded thousands of New York residents of millions of dollars (A 27).** Ministries in the Life Science Church were offered for sale to the public for $3,500 and purchasers were incorrectly advised that upon full payment they would "become completely and legally tax free" (A 18). Petitioners fraudulently advised a prospective minister that upon receipt of minister's credentials he could place "all his property in the name of his particular church and then pay for all personal and family expenses through the church account, thereby avoiding all taxes" (A 18).

Evidence at trial proved that these and other statements to prospective ministers concerning the tax consequences of becoming a minister in the Life Science Church were false. Although petitioners introduced into evidence a document which they claimed to be an Internal Revenue Service tax exemption letter, they later stipulated that they had never received a tax exemption from the Internal Revenue Service (A 25). The court found that the letter which had been displayed repeatedly to prospective ministers as an inducement to purchase minister's credentials "had the earmarks of forgery" (A 25). Petitioners were unable to

* Numerals preceded by "A" refer to pages in the Appendix to the Petition before this Court.

** Respondent's unrefuted allegations at trial proved that petitioners sold ministries to 5,000 New York State residents at a minimum price of $3,500. Therefore, petitioners defrauded New York State residents of at least $17,500,000.

authenticate the letter and it was disavowed by representatives of the Internal Revenue Service who testified for respondent (A 25).*

Respondent's expert witnesses further underscored the fraud perpetrated by petitioners. As the trial court found, those witnesses

> included some of the Nation's leading tax experts: Jerome Kurtz, former Commissioner of the Internal Revenue Service; Father Charles Whelan, professor of law, Fordham University Law School, an expert on church tax exemption; Stanley Weithorn, author of a definitive treatise on tax exempt organizations and Howard Schoenfeld, special assistant to the assistant commissioner for exempt organizations of the Internal Revenue Service. (A 21)

The testimony of these experts confirmed that the Life Science Church and its ministers did not enjoy tax exempt status and that petitioners' statements concerning the tax consequences of the purchase of ministries in the Life Science Church were fraudulent. Based on the evidence presented at trial, the court found that such representations by petitioners had violated section 63(12) of the New York Executive Law (A 25).

The court further found that the church's method of sale of ministries was a "pyramid" or chain distributor scheme which was prohibited by the New York General Business Law (A 25-26). Ordination in the Life Science

* Although a church is not required to apply to the Internal Revenue Service for tax exempt status, it must meet certain criteria if it claims that it enjoys such status. The Life Science Church does not meet the criteria for tax exempt status as required by the Internal Revenue Code (A 21-23).

Church, which took place after attendance at the Life Science "College," entitled each minister to receive a 10% commission for the first two ministers he brought into the church and $500 for each additional minister (A 19). At training seminars, new ministers were told that by joining the church they could become millionaires as a result of the commission system (A 18-20). Petitioners prepared a chart which purported to demonstrate that an investment of $3,500 or $3,600 could result in commissions of $1,023,500 to an individual minister. Petitioners instituted a computerized system to keep track of "who was entitled to what proportion of a new minister's payment" (A 27).

Petitioners, although not attorneys, gave legal advice to prospective ministers concerning tax and other matters (A 18, 20). At one seminar, petitioners presented a film featuring William Drexler, archbishop of the Life Science Church, who was introduced as "the greatest tax attorney in this country" (A 28). Actually, Drexler is a disbarred attorney who has since been convicted of criminal tax fraud for his misrepresentation of the tax laws in the sale of ministries in the Life Science Church (A 17-18). Petitioner Howard Tapen, also not an attorney, was to be contacted for "legal advice" (A 18, 28). The court held that "in its totality, the conduct constitutes the unauthorized practice of law in violation of section 478 of the Judiciary Law" as well as section 63(12) of the Executive Law (A 29).

Section 224 of the New York Education Law* prohibits anyone from using the title "college" unless properly licensed to do so by the state. Petitioners used the title "Life

* The text of the relevant section of this statute is printed in full in the appendix to this brief at RA 1.

Science College'' and purported to grant degrees although they were not licensed to do so. In fact, petitioners stipulated at trial that they were not licensed as a College by the New York State Department of Education (A 29). The court, therefore, found that petitioners had violated the Education Law.

The trial court enjoined petitioners from further violations of New York State statutes which prohibit fraud. A receiver was appointed to collect the fraudulently acquired property in order to create a fund for restitution to defrauded consumers (A 6). In granting respondent's application for injunctive relief, the New York Supreme Court stressed that ministers in the Life Science Church were free to follow its ''religious beliefs and adhere to its theology'' (A 30).

The New York courts never questioned the doctrines of the Life Science Church; nowhere in the record is there any support for petitioners' contention that the trial court impermissibly engaged in an inquiry into the validity of petitioners' beliefs. Indeed, petitioners' claim that the injunction against them violated the Free Exercise Clause of the First Amendment has been rejected by the New York appellate courts on four separate occasions (A 36-45).

The New York Supreme Court, Appellate Division, First Department, except for a modification deleting one decretal paragraph,* unanimously affirmed the trial court's judg-

* The Appellate Division deleted decretal paragraph 6, which had found the individual petitioners to be in contempt of a preliminary injunction entered August 12, 1980. The Appellate Division found that the record did not support the finding of contempt against the individual petitioners, but otherwise upheld the finding of contempt rendered against the Life Science Church.

ment in an order entered April 26, 1983. The decision is reported at 93 A.D. 2d 774, 461 N.Y.S. 2d 803 (1st Dept. 1983) and is reprinted at A 39. Upon the Appellate Division's affirmance of the trial court's judgment, petitioners served a Notice of Appeal as of right to the New York Court of Appeals. The Court of Appeals, *sua sponte,* examined its jurisdiction and after review of counsels' memoranda of law, dismissed the appeal on September 1, 1983, concluding that an appeal as of right did not lie "upon the ground that no substantial constitutional question is directly involved" (A 40-41).*

ARGUMENT

I.

The Trial Court's Injunction Did Not Violate Petitioners' First Amendment Rights But Merely Restrained Petitioners from Conduct Violative of New York State Law.

Petitioners' claim that the trial court should not have examined the church's or its practitioners' activities is obviously without merit (Pet. 15-33). This Court has long recognized that the right to freedom of religion secured by the First Amendment does not immunize from scrutiny acts performed in the name of religion. *Reynolds* v. *United States,* 98 U.S. 145 (1878); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940).

Over one hundred years ago, in *Reynolds,* this Court established that the Free Exercise Clause protected reli-

* The Appellate Division and the Court of Appeals both denied petitioners' subsequent applications for leave to appeal to the Court of Appeals (A 42, 44).

gious opinions and beliefs but did not limit the government's power over "actions which were in violation of social duties or subversive of good order." *Reynolds, supra* at 164. In *Reynolds,* this Court upheld the constitutionality of a statute which prohibited bigamy where the defendant, a Mormon, contended that he had acted in conformity with religious principles in committing bigamy. The Court held that "[l]aws are made for the government of actions and while they cannot interfere with mere religious beliefs and opinions, they may with practices." *Id.* at 166. "To foreclose a court from analyzing a church's activities as needed to determine whether those activities violated a statute, on the ground that the First Amendment forbids such inquiry, would mean that there are no restraints or limitations on church activities. The 'free exercise' of religion is not so unfettered." *United States* v. *Sun Myung Moon,* 718 F.2d 1210, 1227 (2d Cir. 1983), *cert. denied,* —— U.S. ——, 104 S.Ct. 2344 (1984) (citations omitted).

Similarly, petitioners may not "under the cloak of religion . . . with impunity commit frauds upon the public." *Cantwell, supra* at 306.* In the case at bar, the proof at trial did not impermissibly question petitioners' religious beliefs but demonstrated that their acts were deceptive, misleading and unlawful. In addressing the petitioners' First Amendment defense at trial, the trial court stated that the First Amendment to the United States Constitution permitting

* *See also SEC* v. *World Radio Mission, Inc.* ("WRM"), 544 F.2d 535 (1st Cir. 1976), where the court was faced with application of anti-fraud statutes to a religious organization. Although the WRM defendants claimed to be exempt from application of the federal securities laws because they were a religious organization, the court's decision ultimately rested not on constitutional construction but on the court's finding that defendants had violated the anti-fraud provisions of the Securities Act of 1933.

the free exercise of religion was not a "shield" to the application of state statutes enacted to protect society and maintain peace, order and morality (A 32). In saying this, the trial court recognized that petitioners' First Amendment freedoms were not directely affected. Indeed, it is even a long-accepted principle that certain acts, even though prompted by religious beliefs or principles, are subject to governmental regulation when a substantial threat to public safety, peace or order exists. *Sherbert* v. *Verner* 374 U.S. 398 (1963); *Reynolds, supra* at 166-167. As long as the State can show that the limitation on religious practices is essential to accomplish an overriding governmental interest, it is justifiable. *United States* v. *Lee,* 455 U.S. 252 (1982); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972); *Gillette* v. *United States,* 401 U.S. 437 (1971). *See also Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943); *United States* v. *Ballard,* 322 U.S. 78 (1944).*

Yoder, on which petitioners improperly rely, presented a radically different factual situation from that involved here. In *Yoder,* this Court recognized that First Amendment religious freedoms were subject to regulation where important governmental interests were involved. In finding that the interest of people of the Amish religion in limiting their children's education to eight grades supersedes the interest of the state, this Court emphasized that it was

* *Murdock* and *Ballard* are cited by petitioners in support of their First Amendment argument. Yet, both cases accept the fundamental distinction between acts and beliefs discussed herein. In *Murdock,* the Court made clear that First Amendment rights are not absolute and that states are not precluded from enacting statutes "concerning punishment for any . . . unlawful acts . . ." *Murdock,* 319 U.S. at 110, even where those acts are part of religious practice. *Ballard,* too, articulates the distinction between acts and beliefs. *Ballard,* 322 U.S. at 86.

not faced with a situation in which there was "any harm to the . . . public safety, peace, order or welfare . . ." *Id.* at 230. Here, however, the trial court was faced with widespread fraud which was proved conclusively at trial.

The State has a strong interest in protecting its residents against petitioners' fraudulent activities and any incidental impact on their religious practices is therefore justifiable.*

In sum, the state court decisions in this case rest firmly on the permissible application of state law to the facts of this case. The court did not enjoin the Life Science Church from practicing its religion but only from engaging in "those practices not protected by the Constitution and statutes and which are violative of laws applicable to all individuals, groups, organizations and institutions in our society" (A 17). Because the trial court only examined petitioners' activities to determine whether they violated state law, petitioners' First Amendment rights were not violated. Further examination of the trial court's decision by this Court is therefore not warranted.

---

* Petitioners make the baseless claim that the trial court's injunction is invalid because a less restrictive alternative was available. Petitioners claim that the State could have prosecuted individual ministers for tax evasion in lieu of prosecuting petitioners for fraud. Were petitioners' position upheld, their fraud, which was proved conclusively at trial, would go unpunished while the victims of that fraud would be the only subjects of prosecution.

II.

The Provisions of the State Court Judgment Which Ordered Petitioners to Turn Over Assets Do Not Threaten Fifth Amendment Rights and Should Not Be Reviewed by This Court.

Petitioners' assertion that the provisions of the judgment violate their Fifth Amendment privilege against self-incrimination is totally without merit (Pet. 34-37).

The cases which petitioners cite in support of their Fifth Amendment claim all involve statutory schemes which require an individual essentially to submit a written admission of guilt to a governmental agency. Here petitioners are not required to make a "testimonial communication" but rather to turn over, after a judicial finding of culpability, property in their possession in order to create a fund for restitution to defrauded consumers. Such a requirement does not involve the Fifth Amendment. *Cf. Fisher* v. *U.S.*, 425 U.S. 391 (1976). Furthermore, petitioners may not claim the Fifth Amendment privilege as to records or property of the Life Science Church, since the privilege is personal and does not insulate economic or other interests of organizations, incorporated and unincorporated, when to do so would be to frustrate appropriate governmental regulation. *Friedman* v. *HiLi Manor Home for Adults,* 42 N.Y. 2d 408, 397 N.Y.S. 2d 967, 366 N.E. 2d 1322 (1977).

Indeed, the court's judgment does not, as petitioners argue, force them to choose between the exercise of the Fifth Amndment privilege or a penalty. Rather, the judgment imposes penalties for petitioners' fraud and contempt

of a court order. To forbid such action by the court would render meaningless virtually every civil fraud conviction and contempt proceeding in this country.

Conclusion

The state court properly applied state anti-fraud statutes to petitioners without violating their constitutional rights. Since petitioners have raised no substantial constitutional questions, review by this Court is not warranted. It is, therefore, respectfully requested that this Court deny the petition for certiorari.

Dated: New York, New York
June 13, 1984

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Respondent

PETER H. SCHIFF
Acting Attorney-in-Chief
Appeals and Opinions

DANIEL L. KURTZ
PAMELA A. MANN
VALERIE A. VOORHEES
KARIN GOLDMAN
Assistant Attorneys General
Of Counsel

APPENDIX

N.Y. Education Law § 224
(McKinney 1969 and Supp. 1983)

§ 224. Prohibitions

1. No individual, association, copartnership or corporation not holding university, college or other degree conferring powers by special charter from the legislature of this state or from the regents, shall confer any degree or use, advertise or transact business under the name university or college, or any name, title or descriptive material indicating or tending to imply that said individual, association, copartnership or corporation conducts, carries on, or is a school of law, medicine, dentistry, pharmacy, veterinary medicine, nursing, optometry, podiatry, architecture or engineering, unless the right to do so shall have been granted by the regents in writing under their seal.

2. No person shall buy, sell or fraudulently or illegally make or alter, give, issue or obtain or attempt to obtain by fraudulent means any diploma, certificate or other instrument purporting to confer any literary, scientific, professional or other degree, or to constitute any license, or a duplicate thereof, or any certificate of registration, or to certify to the completion in whole or in part of any course of study in any university, college, academy or other educational institution.

3. No person, firm, association or corporation shall offer or otherwise advertise a college degree in the state of New York without the prior written approval of the department, in accordance with the regulations of the commissioner of education, unless the institution offering or advertising

such a degree is accredited by at least one accrediting commission recognized by the United States commissioner of education as a reliable authority for the purpose of accreditation at the post secondary level or unless the program leading to such degree is registered with the department of education of the state of New York. A violation of this subdivision is a violation punishable by a fine not to exceed five hundred dollars. Any newspaper or other advertising medium which carries said advertisement shall be exempt from the provisions of this subdivision.

4. No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree or credential, nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorizd institution the degree or certificate for which the letters are registered. Counterfeiting or falsely or without authority making or altering in a material respect any such credential issued under seal shall be a felony; any other violation of this section shall be a misdemeanor; and any person who aids or abets another, or advertises or offers himself to violate the provisions of this section, shall be liable to the same penalties.